

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

MAR 06 1984

BALLY MANUFACTURING CORPORATION,)

Plaintiff,)

v.)

D. GOTTLIEB & CO., WILLIAMS
ELECTRONICS, INC., AND ROCKWELL
INTERNATIONAL CORPORATION,)

Defendants.)

CIVIL ACTION NO. 78 C2246

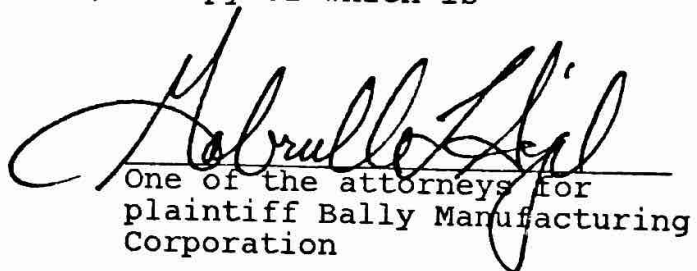
Judge John F. Grady

NOTICE OF FILING

TO: John F. Lynch
Arnold, White & Durkee
750 Bering Drive
Houston, Texas 77210

Melvin M. Goldenberg, Esq.
McDougall, Hersh & Scott
135 South LaSalle Street
Chicago, Illinois 60603

PLEASE TAKE NOTICE that on Monday, March 5, 1984, we
filed with the Clerk of the United States District Court
for the Northern District of Illinois, Eastern Division,
plaintiff's Statement to the Court Regarding Status of Flicker
Electronic Pinball Machine, PX333, a copy of which is
attached hereto.


One of the attorneys for
plaintiff Bally Manufacturing
Corporation

Philip W. Tone
Keith F. Bode
John H. Mathias, Jr.
Gabrielle L. Sigel
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

A. Sidney Katz
Jerold B. Schnayer
Patrick G. Burns
WELSH & KATZ
135 South LaSalle Street
Chicago, Illinois 60603
(312) 781-9470

CERTIFICATE OF SERVICE

Gabrielle L. Sigel, an attorney, states that she caused a copy of the foregoing Notice of Filing and document referred to therein to be served on John F. Lynch, Arnold, White & Durkee, 750 Bering Drive, Houston, Texas 77210 by mail, Wayne Harding, Arnold, White & Durkee, c/o McDougall, Hersh & Scott, 135 South LaSalle Street, Chicago, Illinois 60603 and Melvin M. Goldenberg, McDougall, Hersh & Scott, 135 South LaSalle Street, Chicago, Illinois 60603 by messenger before the hour of 9:30 a.m. on Monday, March 5, 1984.


Gabrielle L. Sigel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,)

Plaintiff,)

v.)

D. GOTTLIEB & CO., WILLIAMS
ELECTRONICS, INC. and ROCKWELL
INTERNATIONAL CORPORATION,)

Defendants.)

CIVIL ACTION NO. 78 C 2246

Judge John F. Grady

DOCKETED

MAR 06 1984

STATEMENT TO THE COURT REGARDING STATUS OF
FLICKER ELECTRONIC PINBALL MACHINE, PX 333

84 MAR -5 A932

FILED

On the evening of February 29, 1984 counsel Bally discovered that 17 chips from the Bally Flicker machine (Exhibit 333) had been replaced with equivalent parts by a repairman in an effort to restore the machine to operation. We have advised opposing counsel and wish to disclose this occurrence and the facts surrounding it to the Court as soon as possible.

Shortly after the current trial recess began, counsel from Welsh & Katz took custody of the Flicker machine and removed it from the courtroom to their offices on the fourteenth floor at 135 South LaSalle Street. On one occasion, counsel for the defendants inspected and photographed the machine and its components at this location.

On the evening of Tuesday, February 28, Mr. Jerold B. Schnayer of Welsh & Katz and Mr. Patrick G. Burns, an associate

of that firm, in furtherance of their investigative efforts, attempted to trace wires from a particular part in Exhibit 333 by the use of an electrical device. (Both Messrs. Schnayer and Burns have degrees and working experience in electrical engineering.) Their technique ran a low-voltage current through a wire connected to the part in question to determine what that wire was attached to. After this examination was concluded, Mr. Schnayer tried to operate the machine and found that it did not function, except for the general illumination lights.

Mr. Schnayer then conferred by telephone with his senior partner, Mr. A. Sidney Katz, who was in California. On the morning of February 29, Mr. Schnayer called Keith F. Bode of Jenner & Block, advised Mr. Bode of the examination that had been made the previous evening and the malfunctioning of the machine, and indicated that he and Mr. Katz suggested that Dave Otto, an employee of Dave Nutting Associates be brought in to attempt to find out what was wrong with the machine and get it to function. Mr. Bode agreed on condition that an attorney be present with Mr. Otto at all times in order to be able to make sure that no tampering or alteration occurred. Mr. Schnayer assured Mr. Bode that he would be there personally. During this telephone conversation, a misunderstanding occurred between Mr. Bode and Mr. Schnayer concerning what Mr. Schnayer was proposing and what Mr. Bode authorized to be done with respect to repairing the machine.

Mr. Schnayer was with Mr. Otto for approximately four hours, during which time Mr. Otto was chiefly testing various parts of the circuits to try and find the area of malfunction under Mr. Schnayer's supervision. During this time Mr. Otto also removed several chips and replaced them with equivalent chips. When Mr. Schnayer left for a meeting with other Bally counsel at about 2:30 p.m., he instructed his associate, Mr. Burns, to remain to supervise Mr. Otto.

Mr. Burns discussed with Mr. Otto the work which had been done prior to 2:30 p.m. and was told that six chips had been replaced, and that the game was still inoperable. Mr. Burns then placed the six chips in a cardboard box. For about the next two hours, Mr. Burns observed Mr. Otto check both the mother board and the computer board for shorted and broken wires and replace some more chips on the computer board. The game was still inoperable.

From approximately 3:00 p.m. on, a meeting of Bally counsel took place in the sixteenth floor conference room at Welsh & Katz, two floors above the room in which the Flicker machine was located. Present during the meeting were Mr. Schnayer from Welsh & Katz; Mr. Bode, John H. Mathias and Gabrielle L. Sigel from Jenner & Block; and Irving S. Rappaport, in-house counsel for Bally. Mr. Bode asked about Mr. Otto's progress. Mr. Schnayer stated that he believed that Mr. Otto had zeroed in on the portion of the machine which was the source of the trouble, but that it was not yet working.

At abc. 4:30 p.m., still under Mr. Burns' supervision, Mr. Otto called Jeffrey Frederiksen and discussed with him what he had done and what further steps he should take. After the discussion, Mr. Otto told Mr. Burns that Mr. Frederiksen had suggested changing all of the chips one at a time until the game became operable. Mr. Burns then observed Mr. Otto systematically replacing with duplicate parts every chip on the computer board which had not been replaced previously, except the CPU, the four EPROM's, and the 4009 RAM. The game was still inoperable. Mr. Burns then observed Mr. Otto calling Mr. Frederiksen again. Mr. Burns was told that Mr. Frederiksen felt that perhaps the problem was in one of the devices which had not been changed.

Mr. Burns then discussed with and assisted Mr. Otto analyzing the computer board on a pin-by-pin basis. Mr. Otto told Mr. Burns that it appeared that more than one EPROM was being selected simultaneously. At approximately 5:30 p.m., Mr. Burns left the room to take a long-distance telephone call from Mr. Katz in an adjacent office. While on the phone, Mr. Burns heard the game begin to operate. When he returned, Mr. Otto told him that he had replaced a 14049 chip and a 14028 chip for the second time, and that the game started operating shortly thereafter.

At about this same time, Mr. Schnayer stated to those assembled in the 16th floor conference room that Mr. Frederiksen was on the phone. Mr. Frederiksen's call

was placed on the speaker phone. Mr. Schnayer stated that Mr. Otto had not been able to find the source of the trouble. Mr. Frederiksen suggested that the trouble might come from the EPROMs. He then proposed that the machine or the EPROMs be taken to the office of Dave Nutting Associates in Arlington Heights to be tested in order to locate the problem. All counsel present rejected this proposal, stating that the machine and the EPROMs would remain at Welsh & Katz and that nothing would be done with the EPROMs which might alter them in any way.

As this conversation was concluding, Mr. Burns reported by another telephone from the 14th floor to Mr. Schnayer that Mr. Otto had fixed the machine and that it was now functioning. Mr. Burns and Mr. Otto then came to the 16th floor conference room, leaving 17 chips which had been removed from the Flicker machine in a cardboard box next to the machine. Mr. Rappaport left the meeting shortly after they arrived. Messrs. Schnayer and Mathias and Ms. Sigel then went to the 14th floor with Mr. Otto to observe what had occurred. Shortly after arrival at the 14th floor office, Mr. Schnayer called the 16th floor conference room and asked Mr. Bode to join them. At this time Messrs. Bode, Mathias, and Ms. Sigel learned for the first time that Mr. Otto had repaired the machine by replacing computer chips and that he had in fact replaced 17 chips. There was discussion as to whether the removed chips should be tested and, if functional, returned to the machine. All counsel

promptly agreed that nothing further should be done with the machine. It was concluded that any procedure which would replace all the original chips except for any which were nonfunctional should be undertaken only under court supervision. The original chips that had been removed were placed in an envelope, which was sealed and initialed for identification purposes.

On Thursday, March 1, 1984, at about 11:00 A.M., while in the Welsh & Katz 16th floor conference room, Mr. Schnayer, Mr. Mathias, and Ms. Sigel were informed by James Zabel, a Welsh & Katz paralegal, that, in the course of readying the machine for transportation back to the courtroom, he had plugged the machine in, pushed the reset button, and that the machine did not work.

At approximately 1:30 p.m., the machine and the sealed envelope containing the removed chips were returned to the courtroom in the presence of a representative of defendant Williams.

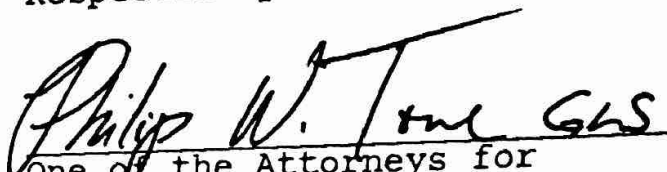
Mr. Lynch was notified of these events by Mr. Bode on March 1. Mr. Lynch stated that he would notify Mr. Goldenberg, who was on trial in Detroit.

CONCLUSION

Counsel deeply regrets that, although everyone involved acted in good faith and it is entirely feasible to replace the chips Mr. Otto removed, the upshot has been that Mr. Tone's assurances to Mr. Lynch that Exhibit 333 "has not and will not be altered" have been violated. Appropriate

discovery with respect to all facts related to these incidents, to the extent desired by counsel for the defendants, is agreeable to counsel for plaintiff.

Respectfully submitted,


One of the Attorneys for
Plaintiff Bally Manufacturing
Corporation

Philip W. Tone
Keith F. Bode
John H. Mathias, Jr.
Gabrielle L. Sigel
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Dated: March 5, 1984

A. Sidney Katz
Jerold B. Schnayer
Patrick G. Burns
WELSH & KATZ
135 South LaSalle Street
Chicago, Illinois 60603
(312) 781-9470